IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6384 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEPAK KUMAR JAGAT NARAYAN MAURYA (BHAIYYAJI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6384 of 2004

MR MM TIRMIZI for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 11-03-2004, by

which the petitioner is detained under PASA as a "dangerous person". Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases pending against the petitioner. All these cases are filed under the provisions of I.P.C. and it is alleged that the petitioner is committing theft of various articles like television sets, CD-VCD player, cupboard etc. After considering the aforesaid cases and statements of three witnesses, order of detention is passed against the petitioner, which is under challenge in this petition.

2) Mr.Tirmizi, learned advocate for the petitioner has submitted that at the time when the detention order was passed, the petitioner was already in judicial custody and the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by the learned advocate for the petitioner that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail, therefore, subjective satisfaction arrived at by the detaining authority stands vitiated.

3) To substantiate his say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That

> likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

4) Learned advocate for the petitioner submitted that it cannot be presumed that the concerned Magistrate will release the petitioner on bail in a routine manner.

5) Considering the aforesaid judgment and considering the fact that since there is nothing to show as to on what basis the authority has come to the conclusion that the petitioner will be released on bail, especially when no bail application is pending, the order of detention is required to be set aside. However, it is clarified that releasing the petitioner from preventive detention itself may not be treated as a favourable ground for releasing the petitioner on bail. It is also clarified that if any bail application is pending at the instance of the detenu, concerned Magistrate may decide the same in accordance with law and on its own merits.

6) Ms.Raval, learned AGP, submitted that looking to the seriousness of the offences committed by the petitioner, the State would like to oppose the bail application preferred by the petitioner seriously. If any bail application is preferred, it is always open for the State to oppose the same on all available grounds.

7) At this stage, learned advocate for the petitioner made a voluntary statement that if the petitioner is released on bail, he will not enter Meghaninagar area of Ahmedabad city upto 31st January, 2005, except for the purpose of attending Court proceedings. This voluntary statement is recorded and it is for the police authority to monitor the same. If the bail application of the petitioner is rejected, then this statement is not required to be carried out.

8) On the aforesaid ground, this petition is allowed. The order of detention dated 11-03-2004 is quashed and set aside. The detenu, Deepak kumar Jagat Narayan Maurya (Bhaiyyaji) is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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